

**FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP PLC**

ATTORNEYS AT LAW

HISTORIC CASTNER-KNOTT BUILDING
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(615) 726-1200 telephone
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MEMPHIS DOWNTOWN
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
Telephone 901-259-7100
Facsimile 901-259-7150

Kristi Stout
kstout@farrismathews.com

2005 JUN -7 PM 4:10
RECEIVED
MEMPHIS EAST
1100 Ridgeway Loop Road, Suite 400
Memphis, Tennessee 38120
Telephone 901-259-7120
Facsimile 901-259-7180

Reply to
Nashville Office

June 7, 2005

Chairman Pat Miller
Attn. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: Petition of King's Chapel Capacity, LLC for Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee Known as Ashby Community Docket No. 04-00335

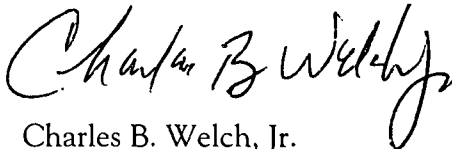
Dear Chairman Miller:

Please find enclosed for filing, an original and 14 copies of King Chapel Capacity's Reply to Response of Tennessee Wastewater Systems to Petitioner's Motion to Re-Convene Proceedings. This Reply also includes an update on the status of the TDEC Standard Operating Permit for this facility. Please date stamp one copy for my records.

Thank you for your assistance regarding this matter. If you have any questions, or if I may be of further assistance, please do not hesitate to contact me.

Very truly yours,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC


Charles B. Welch, Jr.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF KING'S CHAPEL
CAPACITY, LLC FOR CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
SERVE AN AREA IN WILLIAMSON
COUNTY, TENNESSEE KNOWN AS
ASHBY COMMUNITY**

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DOCKET NO. 04-00335

**REPLY OF KING'S CHAPEL CAPACITY, LLC
TO RESPONSE OF TENNESSEE WASTEWATER SYSTEMS TO
PETITIONER'S MOTION TO RE-CONVENE PROCEEDINGS**

King's Chapel Capacity, LLC ("KCC"), by and through undersigned counsel of record, files this reply in response to the Response of Tennessee Wastewater Systems ("TWS") to KCC's Motion to Re-Convene Proceedings. KCC filed an application to obtain a certificate of convenience and necessity to provide sewer service to an area in Williamson County, Tennessee known as Ashby Community. During the proceeding, the TRA ordered that the proceeding be held in abeyance pending:

- (1) the award or refusal to award to King' Chapel Capacity, LLC a state operating permit by the Tennessee Department of Environment and Conservation and the decision whether or not to terminate the permit of Tennessee Wastewater Systems, Inc. by the Tennessee Department of Environment and Conservation; and 2) the dismissal of Count III of the Complaint or the determination of the ownership of the sewer system by the Chancery Court in Williamson County.

As stated by TWS and KCC, Chancellor Russ Heldman of the Williamson County Chancery Court entered an order dismissing Count III and Count IV of the Complaint. However, TWS incorrectly argues that this proceeding should still be held in abeyance pending the processing of a state operating permit ("SOP")

by the Tennessee Department of Conservation and Environment (“TDEC”).

In a letter dated January 26, 2005, from Edward M. Polk, Jr. to Robert J. Pickney, TDEC stated that pending a ruling in the litigation regarding the ownership of the treatment system, it was suspending the permit (No. SOP-03032) issued to TWS (f/k/a On-Site Systems). This suspension became effective within 30 days from the receipt of the notice in the absence of an appeal. After failing to file an appeal, TDEC sent TWS a notification of suspension of its SOP and that TWS had lost its right of appeal. (See “Exhibit 1”). Attached as “Exhibit 2” are all letters regarding the status of the TDEC SOP.

TDEC also stated in the January 26, 2005 letter that it would cease the processing of the permit application for KCC (No. SOP-04056) until receipt of the Court’s ruling. The Court has now entered such an order dismissing Counts III and IV of the Williamson County Chancery Court Complaint as was requested by the TRA directors, a copy of which was filed with KCC’s Motion.

This Authority does not generally withhold the granting of a Certificate of Convenience and Necessity (“CCN”) due to a pending TDEC state operating permit. Instead, conditional CCNs have been issued pending the final outcome of the SOP permit process.¹ As such, moving forward with this proceeding will in no way abrogate prior rulings of this Authority and will not interfere in the future processing of the SOP by TDEC.

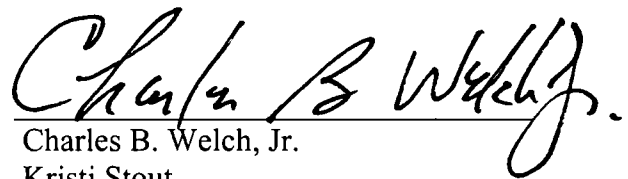
The arguments of TWS are mere attempts to delay this proceeding and to

¹ See “Exhibit 3,” In Re Petition of King’s Chapel Capacity LLC For A Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee, Known as Ashby Community, Transcript of Proceedings (p 10, 7-9) (February 2, 2005) in which Director Ron Jones states that “[t]his agency has never required the receipt of an SOP from TDEC in order for a company to be declared an incumbent or to obtain a CCN

increase the costs of KCC in moving forward with the Ashby Subdivision. Based on the above, KCC respectfully requests that the motion to re-convene these proceedings on an expedited basis be granted.

Respectfully submitted,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

A handwritten signature in black ink, reading "Charles B. Welch, Jr." in a cursive script. The signature is written over a horizontal line.

Charles B. Welch, Jr.
Kristi Stout
Attorneys for Petitioner
618 Church Street, Suite 330
Nashville, TN 37219
(615) 726-1200

CERTIFICATE OF SERVICE

The undersigned hereby certified that the foregoing document has been served upon the following person/s by hand delivery or by United States Mail, with proper postage prepaid thereon:

Henry Walker, Esquire
Boult, Cummings, Conners & Berry, PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, TN 37203-00259

Richard Militana
Militana & Militana
5845 Old Highway 96
Franklin, Tennessee 37064

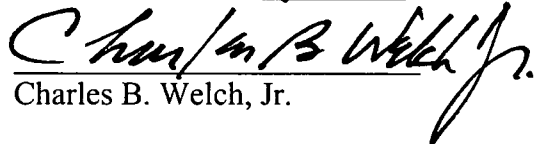
This 7th day of June 2005.

Charles B. Welch, Jr.

EXHIBIT 1

**FILE COPY**

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
6TH FLOOR L & C ANNEX, 401 CHURCH STREET
NASHVILLE, TN 37243-1534

NOTICE OF EFFECTIVENESS OF PERMIT SUSPENSION

March 21, 2005

Mr. Robert J. Pickney, P.E.
Tennessee Wastewater, Inc.
7638 River Road Pike
Nashville, TN 37209

By Certified Mail, Return Receipt Requested
Receipt No. 7004 2510 4685 9210

Re: State Operating Permit No. SOP-03032
Onsite Systems, Inc. - Arrington Meadows
College Grove, Williamson County, Tennessee

Dear Mr. Pickney:

We sent you a Notice of Intent to Suspend Permit in regard to the above referenced permit dated January 26, 2005. We have not received an appeal from you. As it has been more than the thirty days allotted for your appeal, this is your notification that the permit is suspended.

In accordance with TCA 69-3-108(f) and 4-5-320(c), since you did not avail yourself of the opportunity to show compliance with the requirements for a permit, the permit issued to Onsite Systems (SOP-03032) is suspended. The reason for this suspension, which is more fully set forth in the January 26 letter is:

that after the issuance of the permit the department learned that the ownership and control of the facility that is the subject of the permit is contested and the subject of pending litigation in Williamson County Chancery Court.

In reviewing the file for SOP-03032, the department determined that the corporation had notified the department of its name change prior to issuance of the permit.

Upon a final ruling in the litigation regarding who will rightfully own and operate the treatment facility, the Department will revisit this matter and determine if this suspension should be lifted or if the permit should be revoked or modified.

Signed this 21 day of March, 2005,

A handwritten signature in cursive script, reading "Edward M. Polk, Jr.".

Edward M. Polk, Jr., P.E.
Manager, Permit Section
Division of Water Pollution Control

Cc: Sharon Jacobs
John Powell

EXHIBIT 2



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
401 Church Street
Nashville, Tennessee 37243

NOTICE OF INTENT TO SUSPEND PERMIT

January 26, 2005

Mr. Robert J. Pickney, P.E.
Tennessee Wastewater, Inc.
7638 River Road Pike
Nashville, TN 37209

By Certified Mail, Return Receipt Requested
Receipt No. 7099 3228 0007 9323 3384

State Operating Permit No. SOP-03032
Onsite Systems, Inc. - Arrington Meadows
College Grove, Williamson County, Tennessee

The Division of Water Pollution Control (WPC) received a permit application from Onsite Systems, Inc. for a wastewater treatment system to serve a 200-lot subdivision located near Arrington, Tennessee. The Division issued the above referenced permit to Onsite Systems, Inc. on September 11, 2004, No. SOP 03032. On September 23, 2004 the Division received a permit application from Kings Chapel Community Association for the operation of the same wastewater treatment system to serve the same subdivision, Tracking No. SOP-04056. The Division has also received a letter requesting that the application be amended to include an entity, Kings Chapel Capacity, LLC that has applied for a certificate of convenience and necessity from the Tennessee Regulatory Authority.

Prior to the date Onsite Systems, Inc. submitted its application, the name of the corporation had been changed to Tennessee Wastewater, Inc.

The division is also aware that there is litigation between Tennessee Wastewater, Inc. (together with an affiliated corporation) and the property developers, Mr. John Powell, Elaine Powell, and C. Wright Pinson and their Limited Liability Companies regarding payment for construction of the treatment facility and who will own and/or operate the system. Tennessee Wastewater filed a civil action in the Williamson County Chancery Court in November 2004 asserting that the developers had wrongfully failed to pay for work done and to transfer ownership of the facility to them. The plaintiffs' claim is based, at least in part, on a contract and Williamson County regulations. The defendants have filed documents asserting, among other things, that the action should be dismissed, that they have paid all or more than the plaintiffs are entitled to receive. The defendants' position is based, at least in part, on Tennessee statutes governing licensed contractors administered by the Department of Commerce and Insurance.


As can be seen from this brief recitation of the positions of the parties to this litigation, the ownership and right to operate the facility for which both sides seek a permit from the Department is at the core of this litigation. However, the parties' positions are based on laws over which the department has no jurisdiction or authority to decide. The Williamson County Chancery Court is an appropriate place for the controversy to be resolved. Pending a final ruling in the litigation regarding who will rightfully own and operate the treatment facility, the Department is giving notice that it intends to take the following action:

In accordance with TCA 69-3-108(f) and 4-5-320(c), in the absence of an appeal to the Water Quality Control Board, the Department will suspend the permit issued to Onsite Systems (SOP-03032) for the above stated causes.

This suspension will become effective 30 days from the receipt of this notice of intent to suspend permit, in the event that you have not filed an appeal. You have the right to file such an appeal to the Water Quality Control Board by filing it with the undersigned within 30 days from your receipt of this letter. At such a hearing you would have the right to be represented by counsel, subpoena and question witnesses, and to present evidence.

The division is also ceasing processing of the permit application (Tracking No. SOP-04056) for The Kings Chapel Community Association. See attached letter. If you have any questions regarding this action, please don't hesitate to contact me at (615) 532-1178.

Signed this 27th day of January, 2005



Edward M. Polk, Jr.
Manager, Permit Section
Division of Water Pollution Control

Cc: Sharon Jacobs
John Powell

**FILE COPY**

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
6TH FLOOR L & C ANNEX, 401 CHURCH STREET
NASHVILLE, TN 37243-1534

NOTICE OF EFFECTIVENESS OF PERMIT SUSPENSION

March 21, 2005

Mr. Robert J. Pickney, P.E.
Tennessee Wastewater, Inc.
7638 River Road Pike
Nashville, TN 37209

By Certified Mail, Return Receipt Requested
Receipt No. 7004 2510 4685 9210

Re: State Operating Permit No. SOP-03032
Onsite Systems, Inc. - Arrington Meadows
College Grove, Williamson County, Tennessee

Dear Mr. Pickney:

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In accordance with TCA 69-3-108(f) and 4-5-320(c), since you did not avail yourself of the opportunity to show compliance with the requirements for a permit, the permit issued to Onsite Systems (SOP-03032) is suspended. The reason for this suspension, which is more fully set forth in the January 26 letter is:

that after the issuance of the permit the department learned that the ownership and control of the facility that is the subject of the permit is contested and the subject of pending litigation in Williamson County Chancery Court.

In reviewing the file for SOP-03032, the department determined that the corporation had notified the department of its name change prior to issuance of the permit.

Upon a final ruling in the litigation regarding who will rightfully own and operate the treatment facility, the Department will revisit this matter and determine if this suspension should be lifted or if the permit should be revoked or modified.

Signed this 21 day of March, 2005,

A handwritten signature in black ink, appearing to read "Edward M. Polk, Jr.".

Edward M. Polk, Jr., P.E.
Manager, Permit Section
Division of Water Pollution Control

Cc: Sharon Jacobs
John Powell

Law Offices

*

MILITANA & MILITANA

St Petersburg Office:
150 Second Ave N., 16th Floor
St. Petersburg, FL 33701

Miami Office:
8801 Biscayne Blvd.
Miami, FL 33138

Reply to: Tennessee Office:
5845 Old Hwy 96
Franklin, TN 37064
(615) 799-5800

Supreme Court of the United States
United States Tax Court
11th Circuit Court of Appeals Atlanta, Georgia
All State Courts Tennessee * Florida
Federal Court Middle District Tennessee
Federal Court Middle District of Florida
Supreme Court Tennessee

Primary Response #
(813) 714-2835 (24 hr)
(615) 799-6358 (fax)

Michara Militana, Esq. FL-IN
*B.J. Militana Esq. FL-NY (1912-1992)

June 1, 2005

SENT VIA FACSIMILE (615) 741-8724 (confirmed by office record)

Attn: Sohnia W. Hong, Senior Counsel
Office of the Attorney General
Environmental Division
P.O. Box 20207
Nashville, Tennessee 37027-0207

Re: Matter: Kings Chapel Subdivision
Subject: Response SOP 03032

Dear Ms. Hong:

Per your own letter of February 18, 2005 you cited the applicability of Rule 122-5-2.02(8) to wit:

(8) Ownership and Operational Organization. Prior to the approval of final plans, specifications for sewerage facilities that are not owned and operated by a municipality or public utility district, the Department must receive evidence of ownership of the system by a satisfactory organization that will be responsible for the operation and maintenance (such organization as a corporation set up under the General Corporation Act of 1969, an organization that has a charter from the Tennessee Public service Commission, or a title deed m FHA insured loans)

"You additionally stated in your letter of February 18, 2005 that:

"TDEC did not require the same proof of ownership as a matter of administrative economy, but considered TWS's CCN as valid proof of ownership at the time it approved the final plans and specifications."

TDEC did not have the authority or right not to follow its own rules, note the mandatory language in Rule 122-5-2.02(8) "the Department must receive evidence of ownership of the system"

The only evidence of ownership the Department received was from TWS was their proffer of an alleged contract claiming ownership, the same claim of ownership TWS made to the Williamson County Chancery Court. Note that the Court after an extensive trial found that *"there is no set of facts upon which the Court can find that TWS is the owner of the wastewater system"* Note the Chancery Court's Ruling (in relevant part with emphasis added)

"Based upon the evidenced, there is no set of facts upon which the Court can find that TWS is the owner of the wastewater system at issue between the parties. By ordering a dismissal herein of Count III, the Court cannot order a transfer and/or conveyance of the Defendants' real property by Defendants to TWS as Count IV requests. The Court further finds dismissal of Count IV is proper and DUE to be and is HEREIN GRANTED.

The Court herein DISMISSES COUNT III and COUNT IV of the Plaintiffs' Complaint pursuant to Rule 41.02(2)."

As you will note my client Kings Chapel Capacity, LLC dealt with TDEC honestly and with integrity in its assertion of ownership of the property and sewer plant and in all other matters relevant to its Application and to the contrary TWS dealt with TDEC in an obvious dishonest fashion. All done as a scheme, TWS attorney's stated as, to delay the project long enough so that my client would suffer substantial financial damages by tying up the development in legal and administrative proceedings until the financial strain became such that a transfer of the plant could be coerced. They were wrong, my client will never condone dishonesty or duress. TDEC became an unwitting participant in this scheme. Had TDEC simply adhered to its own rules which mandated proof of ownership in granting the SOP and not taken the improper position of ignoring such mandatory language under the guise of "Administrative Economy" and violating there own rules TWS's plan would have been unearthed much sooner. The public trust would have been served and my client's damages avoided.

TWS has not complied with all conditions of the permit, including without limitation the filing with TDEC of a false document purporting ownership of the plant. The Williamson County Chancery Court ruling left no doubt about TWS absolute lack of ownership of the wastewater plant, notwithstanding TWS's false claim of ownership made to TDEC, in stating **"there is no set of facts upon which the Court can find that TWS is the owner of the wastewater system"**. TDEC must now enforce its own rules under section 1200-4-5-.07 (2) (a):

Note the mandatory language of section 1200-4-5-.07 (2) (a):

(a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Water Quality Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

My client, Kings Chapel Capacity, LLC is willing to accept a transfer of the SOP originally granted to the property and the sewer project or at the minimum notification to the TRA that you have terminated the SOP to TWS and have begun to process the SOP application of Kings Chapel Capacity, LLC submitted to TDEC last September.

For your convenience I am attaching a copy of the Williamson County Chancery Court's Order confirming everything stated herein. Please give this your immediate attention as time is of the essence. I remain,

Very truly yours,

MILITANA* & MILITANA



RICHARD MILITANA, ESQUIRE

RM

ATTACHMENT-WILLIAMSON COUNTY CHANCERY COURT ORDER
CC: JOHN POWELL

06/03/2005 12:56

615-741-8724

AG ENVIRONMENT

PAGE 02/03

STATE OF TENNESSEE

Office of the Attorney General

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 80307
NASHVILLE, TN 37208ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERALLUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERALMICHAEL E. MOORE
SOLICITOR GENERALCORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGSTELEPHONE 615-741-3091
FACSIMILE 615-741-2009

June 3, 2005

VIA FACSIMILE TRANSMISSION
(615) 799-6358Richard Militana
Militana & Militana
5845 Old Hwy 96
Franklin, Tennessee 37064

Re: Arrington Meadows/Kings Chapel Subdivision

Dear Mr. Militana:

I am in receipt of your faxed correspondence dated June 1, 2005 and after consulting with the Tennessee Department of Environment and Conservation (TDEC), I am responding to your requests. Furthermore, this correspondence will serve as a response to Mr. John Powell's letter to Ed Polk dated May 24, 2005.

Both in my March 16, 2005 correspondence to you and in the January 26, 2005 letter to Mr. Powell ceasing processing of his application, it was stated that TDEC would wait for a final ruling in the Williamson County Chancery Court litigation before making any further permit decisions in this matter. I am in receipt of the May 23, 2005 order in which the Court ruled that Tennessee Wastewater Systems (TWS) is not the owner of the wastewater system at issue. The May 23, 2005 order is not a final ruling. The Court dismissed two (2) of the four (4) claims brought in the lawsuit and has not ruled on the remaining two issues.

This Office assumed that Mr. Powell would ask the Court to enter the May 23, 2005 order as a final judgment pursuant to Tenn. R. Civ. P. 54.02 and if TWS failed to appeal in a timely manner, then Mr. Powell would have a final ruling in this matter. It is now this Office's understanding that TWS may have filed a petition for an interlocutory appeal, based upon TWS' Response to Motion of King's Chapel to Reconvene Proceedings, that was filed with the TRA on May 31, 2005. Mr. Powell currently does not have a final ruling on the ownership matter.

Reply To: Office of the Attorney General, Environmental Division
P. O. Box 20207, Nashville, Tennessee 37202-0207
Fax: (615) 741-8724

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Jun 06 05 06:14p

06/03/2005 12:56

Militana & Militana

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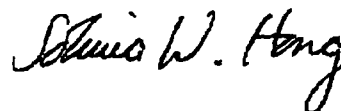
AG ENVIRONMENT

p.2
p.1

PAGE 03/03

At this time, TDEC finds it is not appropriate to consider the King's Chapel Community Association application for a state operating permit or the request for transfer of the TWS permit because there has been no final ruling. When there is a final ruling in this matter, TDEC will begin promptly the appropriate procedures. If you have any questions, please contact me.

Sincerely,



SONIA W. HONG
Senior Counsel

cc: TDEC-OGC
TDEC-WPC

Law Offices

*

MILITANA & MILITANA

St Petersburg Office:
150 Second Ave N., 16th Floor
St. Petersburg, FL 33701

Miami Office:
8801 Biscayne Blvd
Miami, FL 33138

Reply to: Tennessee Office:
5845 Old Hwy 96
Franklin, TN 37064
(615) 799-5800

Supreme Court of the United States
United States Tax Court
11th Circuit Court of Appeals, Atlanta, Georgia
All State Courts Tennessee * Florida
Federal Court, Middle District Tennessee
Federal Court, Middle District of Florida
Supreme Court Tennessee

Primary Response #
(813) 714-2833 (24 hr)
(615) 799-6358 (fax)

Richard Militana, Esq. FL-TN
*B J Militana, Esq. FL-NY (1912-1992)

June 7, 2005

SENT VIA FACSIMILE (615) 741-8724 (confirmed by office record)

Office of the Attorney General of Tennessee
Attn: Sohnia W. Hong, Senior Counsel
P.O. Box 20207
Nashville, Tennessee 37202-0207

Re: Arrington Meadows/Kings Chapel Subdivision

Dear Ms. Hong:

Thank you for your response to my June 1, 2005 correspondence and the attendant cite to Tenn. R. Civ. P. 54.02, it was correct and appreciated. Pursuant thereto and in reliance thereon, be advised that my client is in the process of obtaining the "...final ruling in the *Williamson County Chancery Court litigation...*" regarding the issue of ownership of the wastewater system. For the record the Court's ruling is the only ruling requested and that will be made by the Chancery Court regarding the ownership of the wastewater system, as the remaining Counts I and II do not address issues of ownership.

As you are aware time is of the essence and my client continues to suffer damages occasioned by TWS false claims of ownership of the sewer system and is therefore, relying upon the representation of your office and TDEC that upon obtaining a final ruling of the Chancery Court that TDEC will, without undue delay "...consider the request for transfer of the TWS permit or in the alternative begin promptly the appropriate procedures..." in my client's SOP application.

It is further my understanding that your office will honor the final order of the Chancery Court regardless of any appeal TWS may elect to further delay the process, which does not operate to stay the effect of the final order pending a ruling on the appeal.

Very truly yours,

MILITANA* & MILITANA

A handwritten signature in cursive script, appearing to read "R. Militana", written in dark ink.

RICHARD MILITANA, ESQUIRE

RM

EXHIBIT 3

RECEIVED

BEFORE THE TENNESSEE REGULATORY AUTHORITY
2005 FEB 16 PM 2:50

T.R.A. DOCKET ROOM ORIGINAL

IN RE:

PETITION OF KING'S CHAPEL CAPACITY LLC)
FOR A CERTIFICATE OF CONVENIENCE AND) Docket No.
NECESSITY TO SERVE AN AREA IN) 04-00335
WILLIAMSON COUNTY, TENNESSEE, KNOWN)
AS ASHBY COMMUNITY)

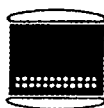
TRANSCRIPT OF PROCEEDINGS

Thursday, February 3, 2005

APPEARANCES:

For Tennessee Wastewater: Mr. Henry Walker
For King's Chapel Capacity: Mr. Chuck Welch

Reported By:
Christina M. Rhodes, RPR, CCR



NASHVILLE COURT REPORTERS

P.O. Box 290903
Nashville, TN 37229-0903
(615) 885-5798 • (800) 552-DEPO
Fax (615) 885-2621

1 (The aforementioned cause came on to
2 be heard on Thursday, February 3, 2005, beginning at
3 approximately 10:23 a.m., before Chairman Pat Miller,
4 Director Deborah Taylor Tate, and Director Ron Jones,
5 when the following proceedings were had, to-wit:)

6
7 CHAIRMAN MILLER: We're going to
8 reconvene in the matter of the petition of King's
9 Chapel Capacity LLC for a certificate of convenience
10 and necessity to serve an area in Williamson County,
11 Tennessee, known as Ashby Community, Docket
12 No. 04-00335, and we're here this morning to conduct
13 deliberations.

14 I understand Mr. Hal Novak and now
15 Mr. Henry Walker are participating by phone, and at
16 this point I will entertain a motion.

17 Director Jones?

18 DIRECTOR JONES: Thank you, Chairman
19 Miller.

20 DIRECTOR TATE: Director Jones, before
21 you get started with your motion, I just didn't know if
22 anyone had any updates for us. Had anything occurred
23 since we met last? Are there any other statements that
24 need to be made?

25 CHAIRMAN MILLER: We can certainly ask

1 the parties.

2 DIRECTOR TATE: And I don't mean to
3 throw this open for another argument. I just didn't
4 know if perhaps there was anything else that could shed
5 any light on this.

6 CHAIRMAN MILLER: Mr. Welch, could you
7 identify yourself for the record, and then I'll
8 recognize Mr. Walker who I understand is participating
9 by phone.

10 MR. WELCH: My name is Chuck Welch.
11 I'm here today on behalf of King's Chapel Capacity.

12 Director Tate, we filed yesterday or
13 the day before the letters that were issued by TDEC
14 addressed to John Powell and Charles Pickney on the
15 26th. To the best of my knowledge, that's the only new
16 development that's available.

17 And if I could I would beg your
18 indulgence to make just one comment. I don't know that
19 I made this clear the other day. We're just asking for
20 our day in court. We're just asking to be heard.
21 There's no proof in the record other than -- or
22 virtually no proof in the record other than the
23 arguments of lawyers; and I think if we hear some
24 proof, it may be necessary at that point to hold the
25 CCN up and hold it in abeyance. But I don't know how

1 we know that right now. There's absolutely -- there's
2 been no testimony. There's been some filings, but --
3 that doesn't reach the level of proof at this point,
4 and we're just asking for an opportunity to be heard.

5 CHAIRMAN MILLER: Thank you,
6 Mr. Welch.

7 Mr. Walker, any comments you want
8 to -- do you want to identify yourself for the record
9 and then any comments you may have in response?

10 MR. WALKER: (Not audible . . .)

11 CHAIRMAN MILLER: Mr. Walker, we're
12 having trouble hearing you. Can you speak up?

13 MR. WALKER: In answer to Director
14 Tate's question, there was argument in chancery court
15 on Monday on a motion to dismiss filed by TWS. The
16 chancellor took that motion under advisement and
17 depositions are scheduled next week.

18 DIRECTOR TATE: Are there any other
19 procedural schedules other than the depositions for
20 next week?

21 MR. WALKER: Not that I know of.

22 DIRECTOR TATE: And you-all had asked
23 for this to be expedited?

24 MR. WALKER: I know that the counsel
25 for King's Chapel is trying to move this along as fast

1 as possible and that is why the depositions are being
2 held next week. I believe that they have asked the
3 chancellor for an early hearing date, and I think the
4 chancellor has scheduled a date in April.

5 MR. WELCH: I think that date is
6 April 28th.

7 DIRECTOR TATE: Thank you. Thank you
8 both for updating us.

9 And I'm sorry to have interrupted,
10 Director Jones.

11 CHAIRMAN MILLER: What you filed,
12 Mr. Welch, says they suspended their permit?

13 MR. WELCH: I believe the letter to
14 Mr. Pickney says that they have initiated that process.
15 There's a due process proceeding that allows for them
16 to appeal that decision, but it will become effective
17 in 30 days if it's not appealed.

18 CHAIRMAN MILLER: Director Jones,
19 you're recognized.

20 DIRECTOR TATE: I had one last
21 question. I'm sorry to interrupt. But for both of
22 you-all, do you feel the issue that Mr. Welch has
23 brought up -- do you feel that this is going to be
24 discussed in depositions or are you-all in a different
25 path with the depositions?

1 MR. WELCH: I do not -- neither I nor
2 Mr. Walker are participating in the chancery court
3 proceeding.

4 DIRECTOR TATE: Okay.

5 MR. WALKER: But I will add, Director
6 Tate, that the issues about the validity of the
7 contract have been raised in the pleadings in chancery
8 court and I'm sure will be addressed in the
9 depositions.

10 DIRECTOR TATE: Thank you.

11 CHAIRMAN MILLER: Any further question
12 or comments before I recognize Director Jones for his
13 motion?

14 DIRECTOR TATE: No. Thank you.

15 CHAIRMAN MILLER: For his comment
16 motion.

17 DIRECTOR JONES: Thank you. Based
18 upon a review of the administrative record here, let me
19 preface my comments by saying that this is a decision
20 that is not denying a day in court but is one where a
21 decision was rendered to wait for further information
22 to become available before administrative proceedings
23 go forward so that certain information could be known.
24 I do agree with the finding of the hearing officer that
25 it would be imprudent for the Authority to move forward

1 with this docket, albeit for different reasons.

2 I cannot agree with the hearing
3 officer's conclusion that the application of
4 TCA 65-4-203 to KCC's position turns on a designation
5 of an incumbent which can only be made after a
6 determination of the chancery court as to the ownership
7 dispute is rendered and the decision by TDEC, T-D-E-C,
8 as to which entity should be granted a state operating
9 permit, an SOP.

10 As to this docket proceeding, I have
11 determined that it would not be administratively
12 efficient for this agency to move forward. On
13 January 26th, 2005 TDEC, the division of water
14 pollution control, issued a notice of intent to suspend
15 TWS's state operating permit which covered the land on
16 which the system in dispute is built. On the same day
17 the division of water pollution control issued a letter
18 evidencing its decision to cease processing KCC's
19 permit application for land on which the system is
20 built.

21 According to the notice, the decision
22 to suspend TWS's SOP is appealable. No appellate
23 rights were provided for in the letter to KCC.

24 It is my understanding of TDEC's
25 requirements that an SOP is required before a

1 wastewater provider can construct or operate a system.
2 Thus, even if this agency were to proceed to grant KCC
3 a CCN, KCC would not be able to proceed to complete the
4 construction and ultimately operate the facility
5 because the processing of its SOP application has been
6 ceased by TDEC.

7 Along these same lines, KCC would not
8 benefit from the granting of a CCN to a third-party
9 provider because that provider would also be required
10 to obtain an SOP, a likely -- and likely that is
11 probable given TDEC's treatment of KCC's application
12 and TWS's current state operating permit.

13 Thus, I would deny the requested
14 alternative relief for these reasons as well as the
15 administrative efficiency justification described above
16 rather than the inability of this agency to provide
17 equitable relief. Additionally, there are numerous
18 factual disputes presented by this case. Many of these
19 disputes, although addressed in some instances in KCC's
20 affidavits, are properly left, in my opinion, for
21 resolution by the chancery court.

22 This agency always considers the
23 public interest when reviewing any CCN application. If
24 this agency were to move forward, such consideration
25 would prove difficult, if not impossible, given the

1 numerous factual disputes. By that I mean move forward
2 at this time. Ultimately we will move forward.

3 As to the applicability of Tennessee
4 Code Annotated 65-4-203(a), I do not agree that it is
5 necessary to determine which entity is the incumbent
6 because 65-4-203(a) does not require that one of the
7 competing facilities belong to an incumbent. Although
8 it is my opinion that 65-4-203 applies generally to all
9 CCN applications, other than those submitted by
10 telecommunications service providers, I cannot
11 determine that 203(a) mandates that a CCN not be
12 granted in this instance because there are no competing
13 facilities. It is only necessary to proceed further
14 into 203(a) where there are at least two routes,
15 plants, lines, or systems that will be in competition
16 with one another or perhaps a refusal to extend an
17 existing facility.

18 Although many facts are in dispute in
19 this docket, it is clear from the record that there is
20 only one system involved in this dispute and neither
21 entity is proposing a construction of a competing
22 system or an extension of the existing incomplete
23 system. Thus, although, in my opinion, 65-4-203(a)
24 applies even without a designation of one of the
25 entities as an incumbent, this section does not set

1 forth the only standards for evaluating whether to
2 grant KCC a CCN.

3 Last, the hearing officer also
4 concludes that the determination of which entity should
5 be granted an SOP is essential to the determination by
6 this agency of which agency is the incumbent -- which
7 entity is the incumbent. This agency has never
8 required the receipt of an SOP from TDEC in order for a
9 company to be declared an incumbent or to obtain a CCN.

10 For the reasons I have just given
11 above, I affirm the conclusions of the hearing officer
12 and the order granting motion to hold proceedings in
13 abeyance and the order denying motion to reconsider or
14 in the alternative motion for immediate relief.

15 CHAIRMAN MILLER: Director Tate?

16 DIRECTOR TATE: Would you repeat your
17 final -- you are in agreement with the conclusions --

18 DIRECTOR JONES: My motion is to
19 affirm the conclusions of the hearing officer in the
20 order granting motion to hold the proceedings in
21 abeyance and to affirm the order denying motion to
22 reconsider or in the alternative motion for immediate
23 relief.

24 DIRECTOR TATE: Are you also giving
25 any -- holding the proceedings in abeyance until some

1 action is taken or just holding the proceedings in
2 abeyance, period?

3 DIRECTOR JONES: Not period. It's
4 consistent with the hearing officer's order, and that's
5 until the chancery court makes a determination.

6 DIRECTOR TATE: Okay. I guess my only
7 other just addition was the possibility -- and I will
8 just ask you-all about this. I would, first of all, be
9 in agreement with your motion, and, secondly, whether
10 or not we should also add some additional criteria
11 should something else be either filed, brought to our
12 attention, some other resolution, some other action by
13 another entity which may affect this or impact the
14 final determination by the TRA in this matter.

15 DIRECTOR JONES: I would be certainly
16 open to that. As I stated in this motion, that the
17 first prong of the petition by KCC was to go forward,
18 and, as I stated, that's virtually of no use to them
19 without a state operating permit from TDEC. They
20 argued an alternative, and I have some issues as I
21 pointed out in here, but certainly if that SOP from
22 TDEC is forthcoming, I think it would be appropriate to
23 revisit this, because, as I have also stated, I don't
24 believe that a failure to identify an incumbent and
25 competitor, as that was used in the hearing officer's

1 report, is fatal to an application as to whether a
2 CCN -- the standard for granting a CCN.

3 DIRECTOR TATE: I understand. Thank
4 you. So if, as we are drafting that order, we could
5 just put or some other action which may impact the
6 final determination by the TRA.

7 And I guess, Mr. Welch, I just wanted
8 to respond to you just specifically, and that is while
9 we don't have a lot of proof in this record, what we do
10 have in this record is that both a chancellor and a
11 state -- another state department which generally has a
12 lot of expertise in these matters have both taken some
13 action, and so I think it's incumbent upon us to
14 realize that. At the same time I think that we have
15 all said that we do have concerns, and, for instance,
16 by setting this today specially, you know, I think we
17 are concerned.

18 We do not in any way want to stymie
19 economic development, you know, and investment of
20 business in this state and certainly, you know, do not
21 want to burden the 48 lot owners or prospective lot
22 owners, but at the same time I think that Director
23 Jones has made some public interest comments that
24 perhaps, you know, outweigh those concerns.

25 So that's one of the reasons that I

1 want to say if there's any other action that's taken,
2 then I would suggest either of the parties come and
3 file something immediately with us.

4 The other thing specifically regarding
5 the dates of the letter that had been filed from TDEC,
6 that gets us to 60 days from here which is, you know,
7 somewhere in April, and then from what Mr. -- well,
8 from what you said, Mr. Welch, it looks like the
9 chancellor has set an April 28th hearing. So, you
10 know, it looks like we're already into April, and I
11 would just say with that in the record that I think
12 that I'm in agreement with Director Jones.

13 CHAIRMAN MILLER: Can I have just a
14 minute?

15 (Pause.)

16 CHAIRMAN MILLER: I'm just going to
17 pass. I don't know that I agree with all the
18 differing -- differences you have with the hearing
19 officer and your rationale, and so I will just pass.

20 Seeing no other business before this
21 panel, I declare we stand adjourned. Thank you.

22 MR. WALKER: Thank you.

23 (Proceedings concluded at
24 10:42 a.m.)
25

REPORTER'S CERTIFICATE

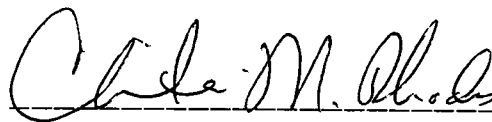
STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

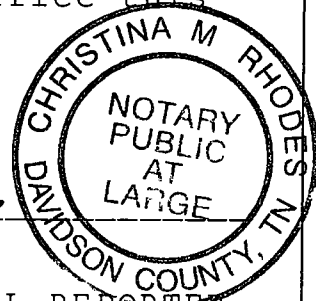
I, Christina M. Rhodes, Registered Professional Reporter, Certified Court Reporter, and Notary Public for the State of Tennessee at Large, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 16th day of February, 2005.



CHRISTINA M. RHODES
REGISTERED PROFESSIONAL REPORTER
AND NOTARY PUBLIC FOR THE STATE
OF TENNESSEE AT LARGE



My Commission Expires
January 28, 2006